

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESSE LEE SHAVERS, JR.,
Plaintiff,
v.
R. CHANDLER, *et al.*,
Defendants.

Case No. 2:23-cv-00112-JDP (PC)

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE AN
AMENDED COMPLAINT AND DENYING
HIS MOTION FOR THE APPOINTMENT
OF COUNSEL

ECF Nos. 11 & 13

SCREENING ORDER THAT PLAINTIFF:

(1) FILE AN AMENDED
COMPLAINT; OR

(2) STAND BY HIS COMPLAINT
SUBJECT TO A
RECOMMENDATION THAT IT BE
DISMISSED

ECF No. 12

THIRTY-DAY DEADLINE

Plaintiff Jesse Lee Shavers is a state inmate proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983. He alleges in his second amended complaint that defendant correctional officers Trujillo and Schriver violated his Eighth Amendment rights.¹ I

¹ Plaintiff filed a motion for leave to file an amended complaint on the same day he filed his second amended complaint; that motion is granted. ECF No. 11.

1 will give plaintiff an opportunity to file a third amended complaint; his second amended
2 complaint does not state a cognizable claim.

3 **Appointment of Counsel**

4 Plaintiff does not have a constitutional right to appointed counsel in this action, *see Rand*
5 *v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court lacks the authority to require an
6 attorney to represent plaintiff. *See Mallard v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 490 U.S. 296,
7 298 (1989). The court may request the voluntary assistance of counsel. *See* 28 U.S.C.
8 § 1915(e)(1) (“The court may request an attorney to represent any person unable to afford
9 counsel”); *Rand*, 113 F.3d at 1525. However, without means to compensate counsel, the court
10 will seek volunteer counsel only in exceptional circumstances. In determining whether such
11 circumstances exist, “the district court must evaluate both the likelihood of success on the merits
12 [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the
13 legal issues involved.” *Rand*, 113 F.3d at 1525 (internal quotation marks and citations omitted).

14 Plaintiff has not demonstrated that he is likely to succeed on the merits, thus I cannot
15 conclude that exceptional circumstances requiring the appointment of counsel are present.

16 **Screening and Pleading Requirements**

17 A federal court must screen a prisoner’s complaint that seeks relief against a governmental
18 entity, officer, or employee. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable
19 claims and dismiss any portion of the complaint that is frivolous or malicious, that fails to state a
20 claim upon which relief may be granted, or that seeks monetary relief from a defendant who is
21 immune from such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

22 A complaint must contain a short and plain statement that plaintiff is entitled to relief,
23 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its
24 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not
25 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.
26 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere
27 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not
28 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,

1 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that
 2 give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264
 3 n.2 (9th Cir. 2006) (en banc) (citations omitted).

4 The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404
 5 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it
 6 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
 7 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).
 8 However, ““a liberal interpretation of a civil rights complaint may not supply essential elements
 9 of the claim that were not initially pled.”” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251,
 10 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)).

11 Analysis

12 Plaintiff’s second amended complaint alleges that defendants Trujillo and Schriver failed
 13 to protect him from assault by another prisoner. ECF No. 12 at 1. Plaintiff provides no further
 14 allegations regarding the events at issue. His threadbare allegations fall short of the pleading
 15 standard articulated in *Twombly* and *Iqbal*. There are no facts alleged in the complaint that would
 16 inform defendant of any allegedly wrongful conduct. *See Jones v. Cmty. Redev. Agency*, 733
 17 F.2d 646, 649 (9th Cir. 1984) (“The plaintiff must allege with at least some degree of particularity
 18 overt acts which defendants engaged in that support the plaintiff’s claim.”).

19 I will grant him a chance to amend his complaint. If plaintiff decides to file an amended
 20 complaint, the amended complaint will supersede the current complaint. *See Lacey v. Maricopa*
 21 *Cnty.*, 693 F. 3d 896, 907 n.1 (9th Cir. 2012) (en banc). This means that the amended complaint
 22 will need to be complete on its face without reference to the prior pleading. *See E.D. Cal. Local*
 23 *Rule 220*. Once an amended complaint is filed, the current complaint no longer serves any
 24 function. Therefore, in an amended complaint, as in an original complaint, plaintiff will need to
 25 assert each claim and allege each defendant’s involvement in sufficient detail. The amended
 26 complaint should be titled “Third Amended Complaint” and refer to the appropriate case number.
 27 If plaintiff does not file an amended complaint, I will recommend that this action be dismissed.

28 Accordingly, it is ORDERED that:

1 1. Plaintiff's motion to file an amended complaint, ECF No. 11, is granted, and his
2 second amended complaint, ECF No. 12, is deemed timely.

3 2. Plaintiff's motion for the appointment of counsel, ECF No. 13, is denied.

4 3. Within thirty days of the service of this order, plaintiff must either file an amended
5 complaint or advise the court he wishes stand by his current complaint. If he selects the latter
6 option, I will recommend that this action be dismissed.

7 4. Failure to comply with this order may result in the dismissal of this action.

8 5. The clerk's office is directed to send plaintiff a complaint form.

9
10 IT IS SO ORDERED.

11 Dated: March 27, 2023



JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE